



Department of  
**Intellectual &  
Developmental Disabilities**

# HCBS Final Rule and Settings

# Goals of the Presentation

- Review of the Final Rule Medicaid HCBS Requirements
- Intent of the Final Rule
- Requirements of the Final Rule
- Highlights of the Final Rule
- HCBS Requirements
- Person-Centered Service Plans
- Resources for the Final Rule

# What is the Final Rule CMS 2249-F & 2296-F?

Published in the Federal Register on January 16, 2014

Title: Medicaid Program; State Plan Home and Community-Based Services, 5-Year Period for Waivers, Provider Payment Reassignment, and Home and Community-Based Setting Requirements for Community First Choice (Section 1915(k) of the Act) and Home and Community-Based Services (HCBS) Waivers (Section 1915(c) of the Act) 2

# Intent of the Final Rule

- To ensure that individuals receiving long-term services and supports through home and community based service (HCBS) programs under the 1915(c), 1915(i) and 1915(k) Medicaid authorities have full access to benefits of community living and the opportunity to receive services in the most integrated setting appropriate
- To enhance the quality of HCBS and provide protections to participants

# Highlights of the Final Rule

- Defines, describes, and aligns home and community-based setting requirements across three Medicaid authorities
- Defines person-centered planning requirements for persons in HCBS settings under 1915(c) HCBS waiver and 1915(i) HCBS State Plan authorities
- Implements regulations for 1915(i) HCBS State Plan benefit
- Provides option to combine multiple target populations within one 1915(c) waiver
- Provides CMS with additional compliance options for 1915(c) waiver programs
- Establishes five-year renewal cycle to align concurrent authorities for certain demonstration projects or waivers for individuals who are dual eligible
- Includes a provider payment reassignment provision to facilitate certain state initiatives

# HCBS Requirements

- The home and community-based setting requirements establish an outcome oriented definition that focuses on the nature and quality of individuals' experiences
- The requirements maximize opportunities for individuals to have access to the benefits of community living and the opportunity to receive services in the most integrated setting
- The final rule defines, describes, and aligns setting requirements for home and community-based services provided under three Medicaid authorities:
  - 1915(c) - HCBS Waivers
  - 1915(i) - State Plan HCBS
  - 1915(k) - Community First Choice 8

# HCBS Requirements

The final rule establishes:

- Mandatory requirements for the qualities of home and community-based settings including discretion for the Secretary to determine other appropriate qualities
- Settings that are not home and community-based
- Settings presumed not to be home and community-based
- State compliance and transition requirements

# HCBS Requirements

## The Home and Community-Based setting:

- Is integrated in and supports access to the greater community
- Provides opportunities to seek employment and work in competitive integrated settings, engage in community life, and control personal resources
- Ensures the individual receives services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services
- Is selected by the individual from among setting options, including non-disability specific settings and an option for a private unit in a residential setting: Person-centered service plans document the options based on the individual's needs, preferences; and for residential settings, the individual's resources
- Ensures an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint
- Optimizes individual initiative, autonomy, and independence in making life choices
- Facilitates individual choice regarding services and supports, and who provides them



# Provider-Owned or Controlled Residential Settings

## Additional requirements:

- Specific unit/dwelling is owned, rented, or occupied under legally enforceable agreement
- Same responsibilities/protections from eviction as all tenants under landlord tenant law of state, county, city or other designated entity
- If tenant laws do not apply, state ensures lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law
- Each individual has privacy in their sleeping or living unit
- Units have lockable entrance doors, with the individual and appropriate staff having keys to doors as needed
- Individuals sharing units have a choice of roommates
- Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement
- Individuals have freedom and support to control their schedules and activities and have access to food any time
- Individuals may have visitors at any time
- Setting is physically accessible to the individual

# Provider-Owned or Controlled Residential Settings

Modifications of the additional requirements must be:

- Supported by specific assessed need
- Justified in the person-centered service plan
- Documented in the person-centered service plan

# Provider-Owned or Controlled Residential Settings

Documentation in the person-centered service plan of modifications of the additional requirements includes:

- Specific individualized assessed need
- Prior interventions and supports including less intrusive methods
- Description of condition proportionate to assessed need
- Ongoing data measuring effectiveness of modification
- Established time limits for periodic review of modifications
- Individual's informed consent
- Assurance that interventions and supports will not cause harm

# Settings that are NOT Home and Community-Based

- Nursing facility
- Institution for mental diseases (IMD)
- Intermediate care facility for individuals with intellectual disabilities (ICF/IID)
- Hospital

# Person-Centered Service Plans

- Final rule includes changes to the requirements regarding person-centered service plans for HCBS waivers under 1915(c) and HCBS state plan benefits under 1915(i)
- Identical for 1915(c) and 1915(i)
- The person-centered service plan must be developed through a person-centered planning process

# 1915(c) and 1915(i) HCBS Person-Centered Service Plans

- The person-centered planning process is driven by the individual
- Includes people chosen by the individual
- Provides necessary information and support to the individual to ensure that the individual directs the process to the maximum extent possible
- Is timely and occurs at times/locations of convenience to the individual
- Reflects cultural considerations/uses plain language
- Includes strategies for solving disagreement
- Offers choices to the individual regarding services and supports the individual receives and from whom
- Provides method to request updates

# 1915(c) and 1915(i) HCBS Person-Centered Service Plans

- Conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare
- Identifies the strengths, preferences, needs (clinical and support), and desired outcomes of the individual
- May include whether and what services are self-directed
- Includes individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, education and others
- Includes risk factors and plans to minimize them
- Is signed by all individuals and providers responsible for its implementation and a copy of the plan must be provided to the individual and his/her representative

# 1915(c) and 1915(i) HCBS

## Written Person-Centered Service Plan Documentation

Written Plan reflects:

- Setting is chosen by the individual and is integrated in, and supports full access to the greater community
- Opportunities to seek employment and work in competitive integrated settings
- Opportunity to engage in community life, control personal resources, and receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS
- Reflects individual's strengths and preferences
- Reflects clinical and support needs
- Includes goals and desired outcomes
- Providers of services/supports, including unpaid supports provided voluntarily in lieu of waiver or state plan HCBS
- Risk factors and measures in place to minimize risk
- Individualized backup plans and strategies when needed



# 1915(c) and 1915(i) HCBS

## Written Person-Centered Service Plan Documentation

Written Plan reflects (con't):

- Individuals important in supporting individual
- Individuals responsible for monitoring plan
- Plain language and understandable to the individual
- Who is responsible for monitoring the plan
- Informed consent of the individual in writing
- Signatures of all individuals and providers responsible
- Distributed to the individual and others involved in plan
- Includes purchase/control of self-directed services
- Exclude unnecessary or inappropriate services and supports
- Must be reviewed, and revised upon reassessment of functional need as required every 12 months, when the individual's circumstances or needs change significantly, and at the request of the individual.

# 1915(i) State Plan HCBS Benefit – Self-Directed Services

- Services that are planned and purchased under the direction and control of the individual (or representative)
- Services include the amount, duration, scope, provider, and location
- Person-centered service plan must meet additional requirements when individual chooses to direct some/all HCBS
- Person-centered service plan specifies employer authority, limits to authority, and parties responsible for functions outside individual authority

# For More Information

- More information about the final regulation is available:  
<https://www.medicaid.gov/medicaid/hcbs/>
- All Providers need to know their requirements regarding compliance with the HCBS Final Rule. More information about the final regulation is available:  
<http://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/home-and-community-based-services/downloads/final-rule-slides-01292014.pdf>